

REMARKS

Applicant respectfully disagrees with the Examiner analysis of the Franzen patent.

Franzen does not have “a main support frame having at least three mounting portions angularly displaced from one another about a central vertical axis....” Franzen has two (or possibly four) divergent brace legs 32, and if the braces on the legs cannot be readily forced into the ground, a post 35 with a guy rope 34 may be provided in advance of the machine, col. 2 lines 80 et seq. Therefore, Franzen mounts his base on two or possibly four (not three legs) and merely uses a post and a rope in line with the two legs when the legs won’t stick into the ground. Franzen does not disclose nor suggest the tripod configuration claimed in amended claim 1.

Applicant has further distinguished Franzen by adding the limitation of “non-telescoping.” Also please note that Applicant’s invention does not have “a central post” but merely an invisible central vertical axis.

Applicant has further distinguished Franzen by adding “at least two” means functioning to secure portions of a fence wire to said main frame (as clearly depicted in FIG. 1). Franzen does not teach or suggest any way to attach multiple fence wires to his device. His stretcher head 13 can support one wire. Franzen’s one unlabeled U-shaped hook under his platform 31 is clearly, as noted above, part of his rope attachment to a post used when his legs do not stick into the ground.

Applicant argues that no basis for a §102 rejection exists, and that Applicant’s invention is non-obvious because multiple fence wires can attach to it (see FIG. 1) and not upset its tripod based stability on the ground.

As a further note amended claim 110 further distinguishes Franzen with an adjustable winch assembly, wherein, Franzen only teaches a fixed winch bolted to his telescoping base.

Claim 105 provides a “plowing” type anchor support for Applicant’s invention, and this is not taught by Franzen.

Applicant’s invention as claimed in the amended claims provides a stationary platform capable of supporting a portable, temporary fence as shown in FIG. 1. It stays with one corner of a fence system.

Franzen's device cannot function as this stationary platform because it might fall over, its central post is way too heavy, costly and cumbersome, it has no tripod type base, and it lacks the "at least two means" to hook fence wires thereto in addition to a winch connection to a fence wire.

Franzen's device is used to move from corner to corner of a permanent fence, and stretch one wire at a time, affix the tightened wire to a fence corner, and move on.

LAW OF OBVIOUSNESS

It is well known that most inventions are composed of elements that *per se* are old and well known. That however, does not make an invention "obvious" under 35 U.S.C. 103. The Examiner's attention is respectfully drawn to, for example, *ACS Hospital Systems, Inc. v. Montefiore Hospital et al.*, 732 F.2d 1572, 1577, 221 USPQ 929 (Fed. Cir. 1984), wherein the Court held that "[o]bviousness cannot be established by combining the teachings of the prior art to produce the claimed combination, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined *only* if there is some suggestion or incentive to do so."

Also, as stated in *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 721 F.2d 1540, 1553, 220 USPQ 303 (Fed. Cir. 1983):

To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.

Finally, even if all the constituents of an invention may be old, if the result would not have been obvious at the time the invention was made to a person having ordinary skill in the art, then the result may be patentable. *Reiner v. I. Leon Co.*, 285 F.2d 501, 503-504, 128 USPQ 25, (2d Cir. 1960).

In order to determine the basis for the rejection, the Examiner must:

- 1). Determine the scope and contents of the prior art;
- 2). Ascertain the differences between the prior art and the claims in issue;
- 3). Resolve the level of ordinary skill in the pertinent art; and
- 4). Evaluate evidence of secondary considerations.

Other basic considerations include:

- 1). The claimed invention must be considered as a whole;
- 2). The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- 3). The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- 4). Reasonable expectation of success is the standard with which obviousness is determined.

Finally, to sustain a *prima facie* case of obviousness:

- 1). There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
- 2). There must be a reasonable expectation of success; and
- 3). The prior art reference must teach or suggest all the claim limitations.

The Examiner fails to meet the requirements to sustain an obviousness rejection based on these references.

LAW OF ANTICIPATION

Section 102 (e) provides:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent....

A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described, in a single prior art reference. See: *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed Cir. 1987), *Structural Rubber Prods. CO. v. Park Rubber Co.*, 749 F.2d 707, 715, 223 USPQ 1264, 1270, (Fed. Cir. 1984), *Connell*, 722 F.2d at 1548, 220 USPQ at 198; *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026, 104 S. Ct. 1284, 79 L. Ed.2d 687 (1984).

Applicant respectfully requests the Examiner to pass this application to allowance.

Date: _____

2-4-04

Respectfully submitted,



Rick Martin
Reg. No. 32,267
Patent Law Offices of Rick Martin, P.C.
416 Coffman Street
Longmont, CO 80501
(303) 651-2177